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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

OLIVER ESPARZA,	§	
	§	
	§	Civil Action No.:
Plaintiff,	§	
	§	
v.	§	
	§	
MEDICREDIT, INC.,	§	JURY TRIAL DEMANDED
	§	
Defendant.	§	
	§	

COMPLAINT

OLIVER ESPARZA (“Plaintiff”), by and through his attorneys, KIMMEL & SILVERMAN, P.C., allege the following against MEDICREDIT, INC. (“Defendant”):

INTRODUCTION

1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”), the Texas Debt Collections Practices Act, Tex. Fin. Code Ann. § 392.301 *et seq.* (“TFDCPA”), and the Telephone Consumer Protection Act, 47 U.S.C. Sec. 227, *et seq.* (“TCPA”).

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business in the State of Texas, and as such, personal jurisdiction is established.

1 14. Defendant's calls originated from the numbers including, but not limited to;
2 (866) 316-9222. The undersigned has confirmed that this number belongs to Defendant.

3 15. When contacting Plaintiff on his cellular telephone, Defendant would use an
4 automatic telephone dialing system and automatic and/or pre-recorded messages.
5

6 16. Plaintiff knew Defendant was using an automatic telephone dialing system and
7 automatic and/or pre-recorded messages as he received automated messages from Defendant.

8 17. On the occasions in which Plaintiff spoke to one of Defendant's representative
9 in December 2015, he requested that they cease telecommunication to his cellular telephone,
10 and instead, direct all communications to his mailing address.
11

12 18. Defendant ignored Plaintiff's request and continued to contact Plaintiff.

13 19. Once Defendant was aware that its calls were unwanted any further calls could
14 only have been for the purpose of harassment.
15

16 20. Defendant's telephone calls were not made for "emergency purposes" but rather
17 to collect a debt.

18 21. Defendant's actions as described herein were taken with the intent to harass,
19 upset and coerce payment from Plaintiff.
20

21
22 **COUNT I**
23 **DEFENDANT VIOLATED § 1692d OF THE FDCPA**

24 22. A debt collector violates § 1692d of the FDCPA by engaging n conduct the
25 natural consequence of which is to harass, oppress, or abuse any person in connection with the
26 collection of a debt.

27 23. Defendant violated § 1692d when it placed repeated harassing telephone calls to
28 Plaintiff and continued to call after it knew the calls were unwanted.

COUNT II
DEFENDANT VIOLATED § 1692d(5) OF THE FDCPA

24. A debt collector violates § 1692d(5) of the FDCPA by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass any person at the called number.

25. Defendant violated § 1692d(5) of the FDCPA when it placed repeated harassing telephone calls to Plaintiff and continued to call after it knew the calls were unwanted.

COUNT III
DEFENDANT VIOLATED § 392.302(4) OF THE TFDCPA

36. A debt collector violates § 392.302(4) of the TFDCPA by causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number.

37. Defendant violated § 392.302(4) of the Texas FDCPA when it placed repeated harassing telephone calls to Plaintiff and continued to call after it knew the calls were unwanted.

COUNT IV
DEFENDANT VIOLATED THE TCPA

38. Section 227(b)(3)(A) of the TCPA authorizes a private cause of action for a person or entity to bring in an appropriate court of that state “an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation.”

39. Section 227(b)(3)(B), of the Act authorizes a private cause of action for a person or entity to bring in an appropriate court of that state “an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is

greater.”

40. Plaintiff did not give consent for Defendant to place telephone calls to his cellular phone after December 2015.

41. Defendant ignored Plaintiff’s revocation and repeatedly placed non-emergency calls to Plaintiff’s telephone without Plaintiff’s consent.

42. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

43. Defendant called Plaintiff on his cellular telephone dozens of times beginning in October 2015, and continuing through June 2016.

44. Defendant’s conduct violated §227(b)(1)(A)(iii) of the TCPA by placing repeated calls using an automatic telephone dialing system and an artificial prerecorded voice to Plaintiff’s cellular telephone number.

WHEREFORE, Plaintiff, OLIVER ESPARZA, respectfully prays for a judgment as follows:

- a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All attorneys’ fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3);
- d. All reasonable attorneys’ fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3) and Tex. Fin. Code § 392.403(b);
- e. Statutory damages of \$500.00 for each violation of the TCPA, pursuant

1 to 47 U.S.C. §227(c)(5)(B);

2 f. Treble damages of \$1,500.00 per violative telephone call pursuant to 47

3 U.S.C. §227(b)(3);

4 g. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and

5 f. Any other relief deemed appropriate by this Honorable Court.

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9
10 RESPECTFULLY SUBMITTED,

11 Dated: August 19, 2016

KIMMEL & SILVERMAN, P.C.

12 By: /s/ Amy Bennecoff Ginsburg

13 Amy Bennecoff Ginsburg

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